

(b) An application for authority to operate a fixed station at temporary locations must specify the precise geographic area within which the operation will be confined. The area specified must be defined as a radius of operation about a given ~~state or states, latitude/longitude latitude/longitude~~, or as a rectangular area bounded by upper and lower lines of latitude and longitude. Exception to this specific requirement may be made for exceptionally large areas, such as the continental United States. Sufficient data must be submitted to show the need for the proposed area of operation.

(1) If ~~an operational fixed~~ a station is authorized to be operated at temporary locations and actually remains, or is to remain, at the same location for a period of over a year, application for a permanent authorization specifying the fixed location must be made as soon as possible but not later than 30 days after the expiration of the one-year period.

~~(2) Operation of a fixed station at temporary locations will be authorized only on the frequency pair 6535/6575 MHz, and in frequency bands shared for operational fixed and mobile operations.~~

(c) A separate ~~application form Form~~ ~~Form~~ for point-to-multipoint frequencies in the 10.6 GHz and 18 GHz bands must be filed for each Nodal Station except for operations consistent with ~~\$101.605(1)(3)~~. ~~\$101.147~~ Each Nodal Station application must specify the service area that will be served by the station in terms of a distance radius or other geographical specification, and, if applicable, the Standard Metropolitan Statistical Area (SMSA) being served.

(d) Application for renewal of station licenses must be submitted on ~~such form as the Commission may designate by public notice.~~ ~~Form~~ Applications for renewal must be made during the license term and should be filed within 90 days, but not later than 30 days, prior to the end of the license term. When a licensee submits a timely application for renewal of a station license, the existing license for that station will continue as a valid authorization until the Commission has made a final decision on the application.

~~(d) Renewal of station license. Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed. Whenever a group of station licenses in the same radio service are to be renewed simultaneously, a single "blanket" application may be filed to cover the entire group if the application identifies each station by call sign and station location. Applicants should note also any special renewal requirements under the rules for each radio service. Section 101.705.~~

(e) A separate application must be filed for each fixed master station in a Multiple Address System (MAS). Applications may include any number of remote stations in a single application, but must specify the geographic service area in which these remote stations will be located. Applications for mobile operations or for systems employing only remote

stations must designate a reference point (set of coordinates) at or near the center of the area being served.

~~§101.15 Application forms for common carrier fixed stations.~~

~~(a) New or modified facilities. FCC Form 494 must be submitted and a license granted for each station prior to commencement of any proposed station construction. FCC Form 494 also must be submitted to amend any license application, to modify any license pursuant to §§101.57(a) and 101.59, and to notify the Commission of modifications made pursuant to §101.61. Cancellation of a license can be made by letter.~~

(b) ~~(f)~~ Certification of completion of construction. FCC Form 494A ~~must be submitted to certify completion of construction.~~

(c) ~~(g)~~ Additional time to construct. FCC Form 701 ("Application for Additional Time to Construct Radio Station") must be filed prior to the expiration of the time for construction noted in a license ~~to modify the license by extending the period of construction.~~

~~(d) Renewal of station license. Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed. Whenever a group of station licenses in the same radio service are to be renewed simultaneously, a single "blanket" application may be filed to cover the entire group if the application identifies each station by call sign and station location. Applicants should note also any special renewal requirements under the rules for each radio service.~~

~~(e) Assignment of license. FCC Form 702 ("Application for Consent to Assignment of Radio Station Construction Authorization or License for Stations in Services Other than Broadcast") must be submitted to assign voluntarily (as by, for example, contract or other agreement) or involuntarily (as by, for example, death, bankruptcy, or legal disability) the station authorization. In the case of involuntary assignment (or transfer of control) the application must be filed within 10 days of the event causing the assignment (or transfer of control). FCC Form 702 must also be used for non-substantial (pro forma) assignments. In addition, FCC Form 430 ("Licensee Qualification Report") must be submitted by the proposed assignee unless such assignee has a current and substantially accurate report on file with the Commission. Whenever a group of station licenses in the same radio services are to be assigned to a single assignee, a single "blanket" application may be filed to cover the entire group, if the application identifies each station by call sign and station location. The assignment must be completed within 45 days from the date of authorization. Upon consummation of an approved assignment, the Commission must be notified by letter of the date at consummation within 10 days of its occurrence.~~

~~(f) Partial assignment of license. Authorization for assignment from one company to another of only a part or portions of the facilities (transmitters) authorized under an existing~~

~~license (as distinguished from an assignment of the facilities in their entirety) may be granted upon application:~~

~~(1) By the assignor on FCC Form 494 for deletion of the assigned facilities (no fee required).~~

~~(2) By the assignee on FCC Form 494 with a request for recertification in the name of the assignee for frequencies eliminated from assignor's license (fee required).~~

~~The assignment must be consummated within 45 days from the date of authorization. In the event that consummation does not occur, FCC Form 494 must be submitted to return the assignor's license to its original condition.~~

~~(g) Transfer of control of corporation holding a conditional license or license. FCC Form 704 ("Application for Consent to Transfer of Control") must be submitted in order to voluntarily or involuntarily transfer control (de jure or de facto) of a corporation holding any conditional licenses or licenses. FCC Form 704 must also be used for non-substantial (pro forma) transfers of control. The transfer must be completed within 45 days from the date of authorization. Upon consummation of an approved transfer, the Commission must be notified by letter of the date of consummation within 10 days of its occurrence. Applicant may request extension of time to consummate by submitting an informal request within 10 days of date expiration of authorization.~~

(h) Licensee qualifications. FCC Form 430 [REDACTED] ("Licensee Qualification Report") must be filed annually, no later than March 31 for the end of the preceding calendar year, by licensees for each common carrier radio service authorized under this part, if service was offered at any time during the preceding year. Each annual filing must include all changes of information required by FCC Form 430 [REDACTED] that occurred during the preceding year. In those cases in which there has been no change in any of the required information, the applicant or licensee, in lieu of submitting a new form, may so notify the Commission by letter.

(i) Cancellation of license may be made by letter.

§101.17 [Reserved]

§101.19 General application requirements.

(a) Each application for a license or for consent to assignment or transfer of control must:

(1) Disclose fully the real party (or parties) in interest, including (as required) a complete disclosure of the identify and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant;

(2) Demonstrate the applicant's legal, technical, and other qualifications to be a licensee;

(3) Submit the information required by the Commission's Rules, requests, and application forms;

(4) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of Sec. 1.65 of this chapter; and

(5) Show compliance with the special requirements applicable to each radio service and make all special showings that may be applicable (e.g., those required by §§101.103(d), 101.701, ~~101.713~~ and of this part, etc.).

(b) In addition to the general application requirements of §§101.19 and 101.21 of this part, applicants must submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by the other parts of the Commission's Rules, and the other subparts of this part (particularly Subpart C and those subparts applicable to the specific radio service involved); and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked.

(c) All applicants are required to indicate at the time their application is filed whether an authorization of the facilities is categorically excluded as defined by §1.1306 of the Commission's rules. If answered affirmatively, an Environmental Assessment as described by §1.1311, need not be filed with the application.

§101.21 Technical content of ~~common-carrier~~ applications.

Applications must contain all technical information required by the application form and any additional information necessary to fully describe the proposed facilities and to demonstrate compliance with all technical requirements of the rules governing the radio service involved (see Subparts C, F, G, I, and J, as appropriate). The following paragraphs describe a number of technical requirements.

(a) Each application proposing a new or modified antenna structure for a station (including a receive-only or passive repeater) must include a copy of the FAA "no hazard determination" if FAA notification is required by Part 17 of this chapter. Complete information as to rules concerning the construction, marking and lighting of antenna structures is contained in Part 17 of this chapter. See also Sec. 101.121 if the structure is used by more than one station.

(b) Each application for construction permit for a developmental authorization must be accompanied by pertinent supplemental information as required by Sec. 101.411 in addition to such information as may be specifically required by this section.

(c) Each application in the ~~Point-to-Point Radio, Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, Local Television Transmission, and Digital Electronic Message Service Services~~ (excluding user stations) proposing a new or replacement antenna (excluding omnidirectional antennas) must include an antenna radiation pattern showing the antenna power gain distribution in the horizontal plane expressed in decibels, unless such pattern is known to be on file with the Commission in which case the applicant may reference in its application the FCC-ID number that indicates that the pattern is on file with the Commission.

(d) ~~Each application in the Private Operational Fixed Point-to-Point Microwave Service and the Common Carrier Fixed Point-to-Point Microwave Service must include the following information:~~

~~Applicant's name and address.
Transmitting station name.
Transmitting station coordinates.
Frequencies and polarizations to be added, changed or deleted.
Transmitting equipment type, its stability, actual output power, emission designator, and type of modulation (loading).
Transmitting antenna type(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer.
Transmitting antenna center line height(s) above ground level and ground elevation above mean sea level.
Receiving station name.
Receiving station coordinates.
Receiving antenna type(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer.
Receiving antenna center line height(s) above ground level and ground elevation above mean sea level.
Path azimuth and distance.
Estimated transmitter transmission line loss expressed in dB.
Estimated receiver transmission line loss expressed in dB.~~

(e) ~~All applicants for regular authorization must, before filing an application, amendments to a pending application, or modifications to a license, prior coordinate the proposed frequency usage with existing users in the area and other applicants with previously filed applications in accordance with the procedures in §101.103~~

(i) ~~In those frequency bands shared with the communication-satellite service an applicant for a new station, for new points of communication, for the initial frequency~~

assignment in a shared band for which coordination has not been previously effected, or for authority to modify the emission or radiation characteristics of an existing station in a manner that may increase the likelihood of harmful interference, must ascertain in advance whether the station(s) involved lie within the great circle coordination distance contours of an existing Earth station or one for which an application has been accepted for filing, and must coordinate his proposal with each such Earth station operator or applicant. For each potential interference path, the applicant must perform the computations required to determine that the expected level of interference to or from the terrestrial station does not exceed the maximum permissible interference power level in accordance with the technical standards and requirements of Secs. 25.251-25.256 of this chapter. The Commission may, in the course of examining any application, require the submission of additional showings, complete with pertinent data and calculations in accordance with Part 25 of this chapter, showing that harmful interference will not likely result from the proposed operation. (Technical characteristics of the Earth stations on file and coordination contour maps for those Earth stations will be kept on file for public inspection in the offices of the Commission's Common Carrier Bureau in Washington, D.C.)

§101.23 Waiver of rules.

NO CHANGE.

§101.25 Inconsistent or conflicting applications.

NO CHANGE.

§101.27 Repetitious applications.

NO CHANGE.

§101.29 Amendment of pending applications.

(a) Any pending application may be amended as a matter of right if the application has not been designated for hearing, or for comparative evaluation pursuant to §101.51, or for the random selection process, provided, however, that the amendments must comply with the provisions of §101.41 as appropriate.

(b) Requests to amend an application designated for hearing or for comparative evaluation, or tentatively selected by the random selection process may be granted only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) The Commission will classify amendments on a case-by-case basis. Whenever previous amendments have been filed, the most recent amendment will be classified by reference to how the information in question stood as of the latest Public Notice issued

which concerned the application. An amendment will be deemed to be a major amendment subject to Sec. 101.37 and Sec. 101.45 under any of the following circumstances:

(1) if the amendment results in a substantial modification of the engineering proposal such as (but not necessarily limited to):

(i) A change in, or an addition of a radio frequency channel;

(ii) A change in polarization of the transmitted signal;

(iii) An increase in the transmitter output power of three (3) dB or ~~more in the Private Fixed, Point to Point, and Local Television Transmission Services;~~ **more;**

(iv) A change in type of transmitter emission or an increase in emission bandwidth ~~requiring a larger authorized bandwidth~~ **of more than ten (10) percent;**

(v) A change in the geographic coordinates of a station's transmitting antenna of more than ~~ten (10)~~ **five (5)** seconds of latitude or longitude, or both;

(vi) A change of more than one (1) degree in the azimuth of the center of the main lobe of radiation of a point-to-point station's transmitting antenna (including any deflections by repeating devices);

(vii) Any change which increases the antenna center line height ~~to a new height that would trigger a requirement for a new aeronautical study; or~~ **by 3.0 meters (ten (10) feet) or more;**

(viii) Any changes or combination of changes which would cause harmful electrical interference to an authorized facility or result in a mutually exclusive conflict with another pending application; or

(ix) Any technical change that would increase the effective radiated power in any direction by more than one and one-half (1.5) dB in the Digital Electronic Message Service.

(2) If the amendment would convert a proposal, such that it may have a significant impact upon the environment under Sec. 1.1307 of the Commission's rules, which would require the submission of an environmental assessment, see Sec. 1.1311 of this chapter, and Commission environmental review, see Secs. 1.1308 and 1.1312 of this chapter.

(3) If the amendment results in a substantial and material alteration of the proposed service.

(4) If the amendment specifies a substantial change in beneficial ownership or control (*de jure* or *de facto*) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under section 310(d) of the Communications Act of 1934 [47 U.S.C. 310(d)]. Such a change would not be considered major where the assignment or transfer of control is for legitimate business purposes other than the acquisition of applications.

(5) If the amendment, or the cumulative effect of the amendment, is determined by the Commission otherwise to be substantial pursuant to section 309 of the Communications Act of 1934.

(d) A pending application may be amended by a major amendment to reflect the relocation of a proposed station site and a new application will not be required if:

(1) The geographic coordinates of the new station site are within 32.2 km (twenty (20) miles) of the coordinates of the original site; and,

(2) The relocated station would serve essentially the same purpose in the system as originally proposed.

(e) The applicant must serve copies of any amendments or other written communications upon the following parties:

(1) Any applicant whose application appears on its face to be mutually exclusive with the application being amended, including those applicants originally served under §101.509;

(2) Any applicant whose application has been found by the Commission, as published in a public notice, to be mutually exclusive with the application being amended; and

(3) Any party who has filed a petition to deny the application or other formal objection, when that petition or formal objection has not been resolved by the Commission.

(e) (f) The Commission may waive the service requirements of paragraph (d) (e) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome. Requests for waiver must be served on petitioners. Oppositions to the petition may be filed within five (5) days after the petition is filed and must be served on the applicant. Replies to oppositions will not be entertained.

(f) (g) Any amendment to an application must be signed and must be submitted in the same manner, and with the same number of copies, as was the original application.

Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

§101.31 Special temporary ~~authority~~ authorization and temporary authorization

(a) Special temporary authorization.

(a) (1) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in Section 101.9 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, expiration date of the existing temporary authorization.

(b) (2) Special temporary authorization may be granted upon written request in the following circumstances:

(1) (i) In emergency situations;

(2) (ii) to permit restoration or relocation of existing facilities to continue communication service;

(3) (iii) to conduct tests to determine necessary data for the preparation of an application for regular authorization;

(4) (iv) for a temporary, non-recurring service where a regular authorization is not appropriate;

(5) (v) in other situations involving circumstances which are of such extraordinary nature that delay in the institution of temporary operation would seriously prejudice the public interest.

(c) (3) The Commission may grant requests for special temporary authority without issuing the public notice provided for in §1.962 of this chapter for periods not exceeding 180 days, if there are extraordinary circumstances supporting the request and where delay in commencing temporary operation would seriously prejudice the public interest. Requests for special temporary authorization not involving extraordinary circumstances may be granted without public notice for a period of 30 days where an application for regular operation is not contemplated or for 60 days pending or after the filing of an application for regular operation.

(d) (4) Request for special temporary ~~authority~~ ~~authorization~~ must contain the following information:

- (1) (i) Name, address, and citizenship status of the applicant;
- (2) (ii) Need for special action, including a description of any emergency or damage to equipment;
- (3) (iii) Type of operation to be conducted;
- (4) (iv) Purpose of operation;
- (5) (v) Time and date of operation desired;
- (6) (vi) Class of station and nature of service;
- (7) (vii) Location of station and points with which station will communicate;
- (8) (viii) Equipment to be used, specifying manufacturer, model number, and number of units;
- (9) (ix) Frequency(s) desired.
- (10) (x) Azimuth and beamwidth of major lobe of transmitting antenna and ERP;
- (11) (xi) Type of emission;
- (12) (xii) Description of antenna to be used, including height.
- (13) (xiii) Certification ~~that prior coordination is complete.~~

(5) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the President or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant construction permits and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

(b) Temporary authorizations. [FROM FORMER §§101.715, 101.717]

(1) Authorizations may be issued upon proper application for rendition of temporary service to subscribers under the following conditions:

(i) When a fixed station is to remain at a single location for less than six (6) months, the location is considered to be temporary. Services which are initially known to be of longer than 6 months' duration shall not be provided under a temporary fixed authorization but rendered pursuant to a regular license.

(ii) When a fixed station, authorized to operate at temporary locations, is to remain at a single location for more than 6 months, an application (FCC Form _____) for a station authorization designating that single location as the permanent location shall be filed at least 30 days prior to the expiration of the 6-month period.

(iii) The station shall be used only for rendition of communication service at a remote point where the provision of wire facilities is not practicable.

(iv) The antenna structure height employed at any location shall not exceed the criteria set forth in §17.7 of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure height for each location has been obtained from the Commission prior to erection of the antenna. See §101.125.

(2) Applications for authorizations to operate stations at temporary locations under the provisions of this section shall be made upon FCC Form _____. Blanket applications may be submitted for the required number of transmitters.

(3) The licensee of stations which are authorized pursuant to the provisions of paragraph (b) of this section shall notify the Commission at least five (5) days prior to installation of the facilities, stating:

(i) The call sign, manufacturer's name, type or model number, output power and specific location of the transmitter(s).

(ii) The maintenance location for the transmitter.

(iii) The location of the transmitting or receiving station with which it will communicate and the identity of the correspondent operating such facilities.

(iv) The exact frequency or frequencies to be used.

(v) The public interest, convenience and necessity to be served by operation of the proposed installation.

(vi) The commencement and anticipated termination dates of operation from each location. In the event the actual termination date differs from the previous notification, written notice thereof promptly shall be given to the Commission.

(vii) A notification shall include compliance with the provisions of §101.21(e) when operations are to be conducted in the area of other terrestrial microwave stations and with the provisions of §101.21(e) when operations are to be conducted within the coordination distance contours of a fixed earth station.

(viii) Where the notification contemplates initially a service which is to be rendered for a period longer than 90 days, the notification shall contain a showing as to why application should not be made for regular authorization.

(4) Less than 5 days advance notice may be given when circumstances require shorter notice provided such notice is promptly given and the reasons in support of such shorter notice are stated.

(5) A copy of the notification shall be kept with the station license.

(c) Prior coordination.

(1) Stations authorized under this section may complete the prior coordination process orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree. The requirements under Section 101.103(d)(2)(i) for written documentation shall apply to such oral notice.

(d) Certification.

Any applicant under this section must submit a certification that neither the applicant nor any party to the applicant is subject to a denial of Federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 1988 as required by §1.2002 of this Chapter.

§101.33 Who may sign applications.

NO CHANGE.

Processing of Applications

§101.35 Preliminary processing of applications.

NO CHANGE.

§101.37 Public notice period.

NO CHANGE

§101.39 Dismissal and return of applications.

(a) Except as provided under paragraph (d) of this Section and under §101.41, any application may, upon written request, be dismissed without prejudice as a matter of right prior to the adoption date of any final Commission action or the application's designation for hearing or comparative evaluation.

(b) Applicants for stations licensed under Subpart H (Private Operational Fixed Point-to-Point Microwave Service) and Subpart I (Common Carrier Fixed Point-to-Point Microwave Service) may request the return of an application for correction without dismissal.

(c) A request to dismiss an application without prejudice will be considered after designation for hearing, after selection through the comparative evaluation procedure of §101.51, or after selection as a tentative selectee in a random selection proceeding, only if:

(1) A written petition is submitted to the Commission and, in the case of applications designated for hearing or comparative evaluation, is properly served upon all parties of record;

(2) The petition is submitted before the issuance date of a public notice of Commission action denying the application; and

(3) The petition complies with the provision of §101.41 (whenever applicable) and demonstrates good cause.

(d) Except as provided under §101.41, an application designated for inclusion in the random selection process may be dismissed without prejudice as a matter of right if the applicant requests its dismissal at least 2 days prior to a random selection proceeding.

(e) Dismissal for failure to prosecute or for failure to respond to official correspondence or requests for additional information within a specified time period will be without prejudice prior to its designation for hearing, or tentative selection by the random selection process. Dismissal may be with prejudice after selection of the comparative evaluation process, or after selection as a tentative selectee in a random selection proceeding.

§101.41 Ownership changes and agreements to amend or dismiss applications or pleadings.

NO CHANGE.

§101.43 Opposition to applications.

NO CHANGE.

§101.45 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" to mean interference which would result in a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) A common carrier application will be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with the other application; and

(2) The application is received by the Commission in a condition acceptable for filing by whichever "cut-off" date is earlier:

(i) Sixty (60) days after the date of the public notice listing the first of the conflicting applications as accepted for filing; or

(ii) One (1) business day preceding the day on which the Commission takes final action on the previously filed application (should the Commission act upon such application in the interval between thirty (30) and sixty (60) days after the date of its public notice).

(c) Whenever three or more applications are mutually exclusive, but not uniformly so, the earliest filed application established the date prescribed in paragraph (b)(2) of this section, regardless of whether or not subsequently filed applications are directly mutually exclusive with the first filed application. [For example, applications A, B, and C are filed in that order. A and B are directly mutually exclusive, B and C are directly mutually exclusive. In order to be considered comparatively with B, C must be filed within the "cut-off" period established by A even though C is not directly mutually exclusive with A.]

(d) Private ~~operational~~ fixed ~~point-to-point~~ microwave applications for authorization under this Part will be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications in accordance with the provisions of §1.227(b)(4).

(e) An application otherwise mutually exclusive with one or more previously filed applications, but filed after the appropriate date prescribed in paragraphs (b) or (d) of this section, will be returned without prejudice and will be eligible for refiling only after final action is taken by the Commission with respect to the previously filed application (or applications).

(f) For the purposes of this section, any application (whether mutually exclusive or not) will be considered to be a newly filed application if it is amended by a major amendment (as defined by §101.29), except under any of the following circumstances:

(1) The application has been designated for comparative hearing, or for comparative evaluation (pursuant to Sec. 101.51), and the Commission or the presiding officer accepts the amendment pursuant to Sec. 101.29(b);

(2) The amendment resolves frequency conflicts with authorized stations or other pending applications which would otherwise require resolution by hearing, by comparative evaluation pursuant to Sec. 101.51, or by random selection pursuant to Sec. 101.49 provided that the amendment does not create new or additional frequency conflicts;

(3) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest, and for which a requested exemption from the "cut-off" requirements of this section is granted;

(4) The amendment reflects only a change in ownership or control which results from an agreement under Sec. 101.41 whereby two or more applicants entitled to comparative consideration of their applications join in one (or more) of the existing applications and request dismissal of their other application (or applications) to avoid the delay and cost of comparative consideration;

(5) The amendment corrects typographical, transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts; or

(6) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option;

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure; or

(iii) The discontinuance or substantial technological obsolescence of specified equipment, whenever the application has been pending before the Commission for two or more years from the date of its filing.

(g) Applicants for the 932.5-935/941.5-944 MHz bands shall select a frequency pair. Applicants for these bands may select an unpaired frequency only upon a showing that spectrum efficiency will not be impaired and that unpaired spectrum is not available in other bands. During the initial filing window, frequency coordination is not required, except that an application for a frequency in the 942-944 MHz band must be coordinated to ensure that it does not affect an existing broadcast auxiliary service licensee. After the initial filing window, an applicant must submit evidence that frequency coordination has been performed with all licensees affected by the application. All frequency coordination must be performed in accordance with §101.103 of the Commission's Rules. In the event of mutually exclusive applications occurring during the initial filing window for the 932.5-935/941.5-944 MHz bands, applicants shall be given the opportunity to resolve these situations by applying for an alternative frequency pair, if one is available. To the extent that there are no other available frequencies or to the extent that mutually exclusive applications remain after this process is concluded, lotteries shall be conducted for each frequency pair among all remaining mutually exclusive applications, assuming appropriate coordination with existing broadcast auxiliary stations can be concluded, where necessary. In the event of mutually exclusive applications being received for these bands on the same day after the initial filing window has closed and a subsequent filing window opened, lotteries shall be conducted for each frequency pair among all mutually exclusive applications.

§101.47 Consideration of applications.

NO CHANGE.

§101.49 Grants by random selection.

NO CHANGE.

§101.51 Comparative evaluation of mutually exclusive applications.

NO CHANGE.

License Transfers, Modifications, Conditions and Forfeitures

§101.53 Assignment or transfer of station authorization.

NO CHANGE.

§101.55 Considerations involving transfer or assignment applications.

(a) Licenses may not be assigned or transferred prior to the completion of construction of the facility. However, consent to the assignment or transfer of control of such a license may be given prior to the completion of construction where:

(1) The assignment or transfer does not involve a substantial change in or ownership or control of the authorized facilities; or in

(2) The assignment or transfer of control is involuntary due to the licensee's bankruptcy, death, or legal disability.

(b) The Commission will review a proposed transaction to determine if the circumstances indicate "trafficking" in licenses whenever applications (except those involving pro forma assignment or transfer of control) for consent to assignment of a license, or for transfer of control of a licensee, involve facilities that were:

(1) Authorized following a comparative hearing and have been operated less than one year, or;

(2) Involve facilities that have not been constructed, or;

(3) Involve facilities that were authorized following a random selection proceeding in which the successful applicant received preference and that have been operated for less than one year.

At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee subsequent to the acquisition of the license, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

(c) If a proposed transfer of radio facilities is incidental to a sale or other facilities or merger of interests, any showing requested under paragraph (a) of this section must include an additional exhibit that:

(1) Discloses complete details as to the sale of facilities or merger of interests;

(2) Segregates clearly by an itemized accounting, the amount of consideration involved in the sale of facilities or merger of interests; and

(3) Demonstrates that the amount of consideration assignable to the facilities or business interests involved represents their fair market value at the time of the transaction.

(d) For the purposes of this section, the one year period is calculated using the following dates (as appropriate):

(1) The initial date of grant of the license, excluding subsequent modifications;

(2) The date of consummation of an assignment or transfer, if the station is acquired as the result of an assignment of license, or transfer of control of corporate licensee; or

(3) The median date of the applicable commencement dates (determined pursuant to paragraphs (d)(1) and (2) of this section) if the transaction involves a system (such as a ~~Private Operational Fixed Point-to-Point Microwave System~~ system) of two or more stations. (The median date is that date so selected such that fifty percent of the commencement dates of the total number of stations, when arranged in chronological order, lie below it and fifty percent lie above it. When the number of stations is an even number, the median date will be a value half way between the two dates closest to the theoretical median).

§101.57 Modification of station license.

NO CHANGE.

§101.59 Processing of applications for facility minor modifications.

(a) Unless an applicant is notified to the contrary by the Commission, as of the twenty-first day following the date of public notice, any application that meets the requirements of paragraph (b) of this section and proposes only the change specified in paragraph (c) of this section will be deemed to have been authorized by the Commission.

(b) An application may be considered under the procedures of this section only if:

(1) It is in the ~~Point-to-Point Microwave Radio, Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, Local Television Transmission, or Digital Electronic Message Service; Services;~~

(2) The cumulative effect of all such applications made within any 60 days day period does not exceed the appropriate values prescribed by paragraph (c) of this section;

(3) The facilities to be modified are not located within 56.3 kilometers (35 miles) of the Canadian or Mexican border;

(4) It is acceptable for filing, is consistent with all of the Commission's rules, and does not involve a waiver request;

(5) It specifically requests consideration pursuant to this section; and

(6) Frequency coordination procedures, as necessary, are complied with in accordance with §101.103(d) or, in the Digital Electronic Message Services, a copy of the application has been served on those who also were served under §101.509.

(c) The modifications that may be authorized under the procedures of this section are:

(1) Changes in a transmitter and existing transmitter operating characteristics, or protective configuration of transmitter, provided that:

(i) In all radio services other than Digital Electronic Message Service, any increase in transmitter output power is less than ~~three~~ 3 dB over the previously authorized output power, and in Digital Electronic Message Service, any increase in transmitter output power is ~~one and one-half~~ 1.5 dB or less over the previously authorized output power;

(ii) The necessary bandwidth is not increased beyond the previously authorized bandwidth;

(2) Changes in the center line height of an antenna, provided that:

(i) In all radio services except the Digital Electronic Message Service, any increase in antenna height is less than ~~6.1~~ 3.0 meters (~~20~~ 10 feet) above the previously authorized height;

(ii) In ~~the~~ Digital Electronic Message Service, any increase in antenna height is less than 3.0 meters (10 feet) above the previously authorized height; and

(iii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters (20 feet) or less (above ground or man-made structure, as appropriate) after the change is made.

(3) Change in the geographical coordinates of a transmit station, receive station or passive facility by five (5) seconds or less of latitude, longitude or both, provided that when notice to the FAA of proposed construction is required by Part 17 of the rules for antenna structure at the previously authorized coordinates (or will be required at the new location) the applicant must comply with the provisions of §101.21(a).

(d) Upon grant of an application under the procedure of this section and at such time that construction begins, the applicant must keep a complete copy of the application

(including the filing date) with the station license if construction begins prior to receipt of the authorization.

§101.61 Certain modifications not requiring prior authorization.

(a) Equipment in an authorized radio station may be replaced without prior authorization or notification if the replacement equipment is equivalent to the replaced equipment.

(b) Licensees of fixed stations in the ~~Point-to-Point Microwave Radio, Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave~~, Local Television Transmission, or Digital Electronic Message Services, may make the facility changes listed in paragraph (c) of this section without obtaining prior Commission authorization, if:

(1) Frequency coordination procedures, as necessary, are complied with in accordance with §101.103(d) or, in the Digital Electronic Message Services, a copy of the notification described in (b)(3) is served on those who were served under §101.509, and

(2) The cumulative effect of all facility changes made within any 60 day period does not exceed the appropriate values prescribed by paragraph (c) of this section, and

(3) The Commission is notified of changes made to facilities by the submission of a completed FCC Form 494 within thirty days after the changes are made.

(c) Modifications that may be made without prior authorization under paragraph (b) of this section are:

(1) Change or modification of a transmitter, when:

(i) The replacement or modified transmitter is type-accepted (or type-notified) for use under this Part and is installed without modification from the type-accepted (or type notified) configuration;

(ii) The type of modulation is not changed;

(iii) The frequency stability is equal to or better than the previously authorized frequency stability; and

(iv) The necessary bandwidth and the output power do not exceed the previously authorized values.

(2) Addition or deletion of a transmitter for protection without changing the authorized power output (e.g. hot standby transmitters);

(3) Change to an antenna (other than any change involving a periscope antenna system), when:

(i) For the ~~Point-to-Point Microwave Radio Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave~~, and Local Television Transmission Services, the new antenna conforms to the requirements of §101.115 and has essentially the same or better radiation characteristics than the previously authorized antenna;

(ii) For the Digital Electronic Message Service, the new antenna conforms with §101.517 and the gain of the new antenna does not exceed that of the previously authorized antenna by more than one dB in any direction.

(4) Any technical changes that would decrease the effective radiated power.

(5) Change to the height of an antenna ~~system~~, when:

(i) The new ~~center line~~ height (~~measured at the center of radiation~~) is within +/-1.5 meters (5 feet) of the previously authorized height; and

(ii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters (20 feet) or less (above ground or man-made structure, as appropriate) after the change is made.

(6) Decreases in the overall height of an antenna structure, provided that, when notice to the FAA of proposed construction was required by Part 17 of the Rules for the antenna structure at the previously authorized height, the applicant must comply with the provisions of §101.21(a).

(7) Changes in the azimuth of the center of the main lobe of radiation of a point-to-point station's antenna by a maximum of one degree.

(8) Changes to the transmission line and other devices between the transmitter and the antenna when the effective radiated power of the station is not increased by more than one dB.

(d) Licensees may notify the Commission of permissible changes or correct erroneous information on a license not involving a major change (i.e., a change that would be classified as a major amendment as defined by §101.29) without obtaining prior Commission approval by filing FCC Form 494.

§101.63 Period of construction; certification of completion of construction.

(a) ~~Except as provided in paragraphs (b) and (f) of this section, each~~ **Each** station authorized under this part must be in operation within ~~12 18~~ months from the initial date of grant. Modification of an operational station must be completed within ~~12 18~~ months of the date of grant of the applicable modification request.

(b) ~~Each station licensed on point-to-multipoint frequencies in the 10.6 GHz and 18 GHz bands must be in operation within 18 months of the initial date of grant. Modification of an operational station must be completed within 18 months of the initial date of grant of the applicable modification request.~~ (e) Failure to timely begin operation means the authorization cancels automatically and must be returned to the Commission. Neither the capability for transmission nor the transmission of color bars or similar test signals constitutes operation. For purposes of this rule, the transmission of operational traffic, not test or maintenance signals, is necessary and sufficient to constitute operation.

(d) ~~(c)~~ The frequencies associated with all point-to-multipoint authorizations which have cancelled automatically or otherwise been recovered by the Commission will again be made available for reassignment on a date and under terms set forth by Public Notice.

(e) ~~(d)~~ Requests for extension of time to be in operation may be granted upon a showing of good cause, setting forth in detail the applicant's reasons for failure to have the facility operating in the prescribed period. Such requests must be submitted no later than 30 days prior to the end of the prescribed period to the Federal Communications Commission, Gettysburg, PA 17325-7245.

(f) ~~(e)~~ Construction of ~~Common Carrier stations may not commence until the grant of a license, and any station~~ must be completed by the date specified in the license as the termination date of the construction period. Each licensee must file with the Commission a certification of completion of construction using FCC Form 494A, ~~_____~~, certifying that the facilities as authorized have been completed and that the station is now operational and ready to provide service to the public, and will remain operational during the license period, unless the license is submitted for cancellation.

§101.65 Forfeiture and termination of station authorization.

(a) ~~A common carrier~~ license will be automatically forfeited in whole or in part without further notice to the licensee upon:

(1) The expiration of the construction period specified therein, or after such additional time as may be authorized by the Commission, unless within 5 days after construction period date a certification of completion of construction has been filed with the Commission pursuant to §101.63; or

(2) The expiration of the license period specified therein, unless prior thereto an application for renewal of such license has been filed with the Commission; or

(3) The voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more.

(b) A license forfeited in whole or in part under the provisions of paragraph (a)(1) or (a)(2) may be reinstated if the Commission, in its discretion, determines that reinstatement would best serve the public interest, convenience and necessity. Petitions for reinstatement filed pursuant to this subsection will be considered only if:

(1) The petition is filed within 30 days of the expiration date set forth in paragraph (a)(1) or (a)(2) of this section, whichever is applicable;

(2) The petition explains the failure to timely file such notification or application as would have prevented automatic forfeiture; and

(3) The petition sets forth with specificity the procedures which have been established to insure timely filings in the future.

(c) A special temporary authorization will automatically terminate upon the expiration date specified therein, or upon failure to comply with any special terms or conditions set forth therein. Operation may be extended beyond such termination date only after application and upon specific authorization by the Commission.

(d) If a station licensed under this part discontinues operation on a permanent basis, the licensee must forward the station license to the Federal Communications Commission, Gettysburg, Pennsylvania 17325, for cancellation. For purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued. See Section 101.305 for additional rules regarding temporary and permanent discontinuation of service.

§101.67 License period.

NO CHANGE.

§101.69 Transition of the 2.11-2.13, and 2.16-2.18 GHz bands from ~~the~~ Common Carrier ~~Point-to-Point~~ Fixed Microwave Services and the 1.85-1.99, 2.13-2.15, and 2.18-2.20 GHz bands from ~~the~~ Private Operational Fixed ~~Point-to-Point~~ Microwave Service to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies (ET Licensees) may negotiate with Common Carrier and Private Operational Fixed ~~Point-to-~~

Point-to-Point Microwave Service licensees (Existing Licensees) in these bands for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to other fixed microwave bands or to other media, or alternatively, would accept a sharing arrangement with the ET Licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations. ET Licensees may also negotiate agreements for relocation of the Existing Licensees' facilities within the 2 GHz band in which all interested parties agree to the relocation of the Existing Licensee's facilities elsewhere within these bands. "All interested parties" includes the incumbent licensee, the emerging technology provider or representative requesting and paying for the relocation, and any emerging technology licensee of the spectrum to which the incumbent's facilities are to be relocated.

(b) Common Carrier and Private Operational Fixed **Point-to-Point** Microwave Service licensees, with the exception of public safety facilities defined in paragraph (f) of this section, in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology ~~services~~ **service** (two-year voluntary negotiation period), and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period) or, in bands allocated for unlicensed emerging technology services, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period). When it is necessary for an emerging technology provider or representative of unlicensed device manufacturers to negotiate with a fixed microwave licensee with operations in spectrum adjacent to that of the emerging technology provider, the transition schedule of the entity requesting the move will apply. Public safety facilities defined in paragraph (f) of this section will maintain primary status in these bands until ~~four~~ **three** years after the Commission commences acceptance of applications for an emerging technology service (~~four~~ **three**-year voluntary negotiation period), and until ~~one~~ **two** years after an emerging technology service licensee or an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (~~one~~ **two**-year mandatory negotiation period).

(c) The Commission will amend the operation license of the ~~fixed-microwave~~ **Common Carrier and Private Operational Fixed Point-to-Point Microwave Service** operator to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service entity completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) The emerging technology service entity builds the replacement system and tests it for comparability with the existing 2 GHz system.

(d) The 2 GHz microwave licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the 2 GHz microwave licensee demonstrates that the new facilities are not comparable to the former facilities, the emerging technology service entity must remedy the defects or pay to relocate the microwave licensee back to its former or equivalent 2 GHz frequencies.

(f) Public safety facilities subject to the ~~four-year~~ ~~three-year~~ voluntary and ~~one-year~~ ~~two-year~~ mandatory negotiation periods, are those that the majority of communications carried are used for police, fire, or emergency medical services operations involving safety of life and property. The facilities within this exception are those facilities currently licensed on a primary basis pursuant to the eligibility requirements of §90.19, Police Radio Service; §90.21, Fire Radio Service; §90.27 Emergency Medical Radio Service; and Subpart C of Part 90, Special Emergency Radio Services. Licensees of other Part 101 facilities licensed on a primary basis under the eligibility requirements of Part 90, Subparts B and C, are permitted to request similar treatment upon demonstrating that the majority of the communications carried on those facilities are used for operations involving safety of life and property.